



RESTORATION SERVICES AGREEMENT

THIS RESTORATION SERVICES AGREEMENT ("Agreement") is made effective on 8/25/17 by and between:

OWNER: REFUGIO COUNTY

and

CONTRACTOR: Virtus Group LLC
13725 S. Mur-Len
Rd Olathe, KS
66062

PROPERTY: REFUGIO COUNTY BUILDINGS

GENERAL SCOPE OF WORK:

Virtus Group will furnish all labor, materials, supervision and management to complete emergency services and reconstruction, restoration or repair on county owned buildings from Hurricane Harvey.

CONTRACT PRICE:

Contractor conducted inspection of Owner's Property after HURRICANE HARVEY that occurred on or about 8/25/17. Owner desires to hire Contractor to perform the restoration, remediation, and other services on the Property as outlined in the general scope of work noted above.

The Parties agree as follows:

- 1. The Work.** Contractor agrees to perform the remediation, restoration, and other services on the Property as agreed to with Texas Association of Counties (the "Work"). Contractor shall provide all labor, materials, equipment, tools, machinery, transportation, testing, waste disposal, and insurance to perform the Work.
- 2. Commencement and Completion.** Contractor will perform its work with diligence and promptness and as mutually agreed upon by the parties. Contractor HAS ALREADY STARTED work on the Project immediately upon the signing of this Agreement by Owner and receipt of the initial down payment. Contractor anticipates the Contract Time to be 240 days.
- 3. Contract Price.** Owner agrees to pay Contractor for the performance of the Work in the total sum to be determined by final agreement with Texas Association of Counties on the scope of work and total cost of repairs, plus any deductible under the insurance policy, subject to additions and deductions for changes in the Work. Owner will not be obligated to any costs or fees for the agreed scope of Work, other than the deductible.
- 4. Terms and Conditions.** The Standard Terms and Conditions, which are attached to this Agreement as Attachment B, are attached to and made a part of this Agreement. The Standard Terms and Conditions govern all work performed by Contractor and its subcontractors. In the event that any provision of any invoice, acknowledgment, quotation, proposal, delivery ticket, authorization, work order, schedule, purchase order, or other document whatsoever provided by either party to the other party conflicts with or alters the provisions in this Agreement, the provisions of this Agreement shall govern and control, and the terms of such document are void and unenforceable. This Agreement may be modified only by a writing signed by both parties.

5. Special Provisions:

List of Attachments: The following Attachments are part of this Agreement:

Attachment B – Standard Terms and Conditions

Payment Terms: Initial down payment \$_____

6. Authorization to Pay:

To: _____ Insurance

I understand this Authorization-To-Pay extends solely for the services or repair expenses covered by my insurance policy as a result of the above named loss.

I agree to separately pay and be liable to the independent contractor and/or independent service provider(s) for any services, repairs or additional improvements made at my direction that are not covered under my insurance policy.

I authorize payment on my behalf to Virtus Group, LLC in the above referenced claim for the amount shown on the final estimate(s) or invoices sent to _____ (Insurance Company) by the above named contractor/service provider

7. Complete Agreement. This Agreement sets forth the entire and integrated agreement between Owner and Contractor and supersedes any and all prior agreements, representations, and negotiations. No verbal agreement or conversation with any representative or employee of Contractor, either before or after execution of the Agreement, shall affect or modify any of the terms or obligations of this Agreement.

OWNER:

By: Alex Marchuk
Title: County Judge
Date: 9/26/17

CONTRACTOR:

Virtus Group LLC
By: Allen J. Dinger
Title: National Auto Rep
Date: 9/26/17

ATTACHMENT B STANDARD TERMS AND CONDITIONS

1. Warranty.

Workmanship: Contractor warrants that the work performed will be free from defects caused by faulty workmanship for a period of twelve months after substantial completion of the Work.

Material Warranty: Contractor warrants that all materials and equipment used in the Work will be free of any security interest and will make available to Owner all transferable warranties made to Contractor by the manufacturer of the materials and equipment.

Entire Warranty: THE WARRANTIES OF THIS PARAGRAPH ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Contractor's Obligation: Contractor shall correct any defects due to faulty workmanship, which appear within twelve (12) months after substantial completion of Contractor's Work. Contractor's obligation and liability under this warranty are limited to the repair or replacement of any defective workmanship or materials, at the project site, and shall not in any case extend to any loss of anticipated profits, rents, shutdown or non-operation of the facility, or other consequential loss suffered by Owner from any cause, including defects covered by this paragraph.

Exclusions: This Warranty does not cover any failure or defect resulting from:

1. Substrate deterioration or movement;
2. Water infiltration;
3. Harmful chemicals, fumes, or vapors;
4. Vandalism or physical abuse;
5. Lack of proper maintenance and repair;
6. Unauthorized penetrations or repairs;
7. Acts beyond the reasonable control of Contractor, including without limitation, fire, flood, earthquake, tornado, explosions, Acts of God, or other catastrophic events.

Notice: Any warranty claim must be presented promptly in writing to Contractor, but in no event more than 12 months after the substantial completion of Contractor's Work, or the claim shall be waived by Owner.

2. Terms of Payment. Payments are due within ten (10) days from the submission to Owner of an invoice for payment or as set forth in paragraph 5 of the Agreement. A "late payment" charge of one and one-half percent (1-1/2%) per month or the maximum legal interest rate, whichever is greater, will be made on all monies past due and shall be paid immediately. Contractor may request monthly progress payments for the value of the work performed.

3. Permits. Unless otherwise provided in the Agreement, all building, construction, and other permits required for the Work shall be obtained by Contractor with Owner's assistance.

4. Other Charges. The Contract Price shall include applicable sales and use tax. However, Owner shall pay any other charges upon the sale, use, transportation, production or installation of the material, structures, or real property additions and improvements in excess of those covered by this Agreement. If Contractor is required to pay any such charges, Owner shall promptly reimburse Contractor.

5. Performance Dates. The schedule, if stated in the Agreement or Contractor's Proposal, is approximate and is not guaranteed by Contractor. Contractor shall not be liable for delays in delivery, fabrication or installation when such delays result from acts of government, acts of God, adverse weather, war, riot, labor disputes, civil insurrection or any other causes beyond Contractor's reasonable control, and the date of performance shall be adjusted for any such delays. Contractor shall not be responsible for damages for delayed completion.

6. Contract Amendments. Either Contractor or Owner may propose changes to the Work, and such changes shall be incorporated into Contractor's Work as long as mutually agreed upon and the proper adjustments in price and schedule are made.

7. Access. Owner shall provide adequate working and storage areas, utilities, and reasonable access to the job site.

8. Property/Site Conditions. Because the Work involves the restoration, remediation, and repair of damaged property, Contractor has used a reasonable judgment in submitting its proposal to repair the Property. Contractor shall advise Owner of any

conditions that differ from the anticipated conditions. Contractor is entitled to an adjustment in the Contract Price and Owner shall pay any additional costs incurred by Contractor plus a reasonable overhead and profit as a result of variations in the conditions of the project or site or Property (including but not limited to conditions that were not anticipated by Contractor.)

9. Hazardous Conditions. In the event that Contractor encounters material on the site that is reasonably believed to be a hazardous substance, including without limitation, asbestos-containing material, Contractor will immediately stop work in the area affected and report the condition to the Owner.

A. Upon Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Price shall be increased in the amount of the Contractor's additional costs of shut-down, delay and start-up, plus a reasonable markup for overhead and profit.

B. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless Contractor and its subcontractors, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

10. Labor. Contractor will use non-union labor. If use of union labor or the payment of prevailing wages is required, the Contract Price will be modified for the cost of using union labor or paying prevailing wages.

11. Professional Services. Contractor is not a licensed design professional and is not providing professional architectural, design, or engineering services in performing the Work. If Contractor determines that the services of a professional architect or engineer are required, such services, will be provided by Owner or, if requested by Owner, may be subcontracted by Contractor, with Owner reimbursing Contractor for the costs of retaining such professional, including an appropriate markup.

12. Indemnification. Owner agrees to defend and indemnify Contractor against any loss or expense from any claim or suit against Contractor as a result of any bodily injury or property damage to the extent caused by the negligence of Owner or its agent, employees, or suppliers. Contractor agrees to indemnify Owner for any loss or expense from any claim or suit against Owner as a result of any bodily injury or property damage to the extent caused by the negligence of Contractor or its sub-subcontractors, agents or employees. Neither party shall be required to indemnify the other party for the other's negligence.

13. Insurance.

A. **Owner's Insurance.** Owner will procure and maintain Commercial General Liability insurance from commencement of the Work until twelve (12) months after the Project is finally completed. The limit of liability under such insurance shall be at least \$1,000,000 for any one occurrence. Owner shall purchase and maintain for the term of the Agreement property and casualty insurance in the full replacement value of the Property.

B. Owner and Contractor waive all rights of subrogation for claims covered by the Parties' insurance.

C. **Contractor's Insurance.** Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

1. Commercial General Liability (CGL)
\$1,000,000
2. Business Automobile Liability
\$1,000,000
3. Umbrella
\$1,000,000
4. Worker's Compensation
Statutory Limits

14. Contractor will name Owner as an additional insured on commercial general liability insurance policies upon request.

15. Limitation of Liability. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE ARISING OUT OF ANY WORK PERFORMED FOR OWNER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFIT, BUSINESS INTERRUPTION, INTEREST, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION OF THE OWNER'S FACILITIES OR PROPERTY, INCREASED EXPENSES OF OPERATION OF THE PROJECT, THE FACILITY, OR OTHER FACILITIES, OR SPECIAL CONSEQUENTIAL LOSS OR DAMAGE, ARISING FROM ANY CAUSE WHATSOEVER. To the fullest extent permitted by law, the total liability, in the aggregate, of Contractor to Owner or anyone claiming by or through Owner, for any and all liabilities, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Contractor's services or Work or the Project, from any cause or causes whatsoever, including without limitation, negligence, strict liability, warranty, or breach of contract, shall not exceed the Contract Price.

16. Cancellation. Upon cancellation of this Agreement prior to completion of project, Owner shall be responsible to Contractor for all costs of cancellation, including (1) the proportionate contract price for all Work completed, whether shipped or not, prior to Contractor's receipt of notice or cancellation; (2) all costs incurred by Contractor in connection with Work not completed at the time notice of cancellation is received; (3) 25% of Contractor's anticipated profit/fee for the work not performed; and (4) all expenses incurred by Contractor by reason of such cancellation, including costs arising from termination of subcontractors and vendors. This clause shall not limit nor apply to Owner's remedies in the event Contractor breaches or fails to perform any of the material terms of this Agreement; provided, however, that Contractor's liability shall not exceed the limitation of liability set forth in these Standard Terms and Conditions.

17. Termination.

A. If the Owner fails to make payment for a period of 20 days after the date the payment is due, Contractor may, upon three days' written notice to Owner, terminate this Agreement and recover from the Owner payment for Work executed and for loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit applicable to the Project. In the alternative, Contractor may suspend Work until payment has been made and shall be entitled to recover from

Owner all cost incurred in starting and stopping Work on the Project.

B. If Contractor defaults or persistently fails or neglects to carry out the Work in accordance with this Agreement or fails to perform a provision of the Agreement, Owner, after seven days' written notice to Contractor, may make good such deficiencies and may deduct the reasonable cost thereof from the payment due Contractor. If the unpaid balance of the Contract Amount exceeds costs of finishing the Work, such excess shall be paid to Contractor, but if such costs exceed such unpaid balance, Contractor shall pay the difference to Owner, subject to the limitation of liability set forth in these Terms and Conditions.

18. Choice of Law. This Agreement and any disputes arising under or related to it shall be governed by the laws of place where the Project is located.

19. Assigns. Neither party shall assign this Agreement without written consent of the other party; however, subcontracting is permitted.

20. Attorneys' Fees. In any proceeding or other action brought by one party against the other party to enforce or interpret the terms of this Agreement, or to resolve any dispute concerning any of the services, work, or obligations of this Agreement or any other matter arising out of this Agreement, the prevailing party in such proceeding or action shall be entitled, in addition to such other relief the court may grant, to an award of its costs and expenses incurred in connection with the proceeding or action, including, but not limited to, reasonable fees and disbursements of its attorneys